

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, August 11, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Ann Bleed, Steve Duvall, Barbara Hopkins, Gerry Krieser, Greg Schwinn, Cecil Steward, Rick Wallace and Joe Wilson; (Russ Bayer absent). John Bradley, Ray Hill, Steve Henrichsen, Mike DeKalb, Jennifer Dam, Nicole Fleck-Tooze, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair, Barbara Hopkins called the meeting to order and requested a motion approving the minutes for the meeting held July 28, 1999. Jean Walker submitted proposed amendments to pp.25-26 of the minutes. Motion to approve, as amended, made by Krieser, seconded by Schwinn and carried 6-0: Duvall, Hopkins, Krieser, Schwinn, Steward and Wallace voting 'yes'; Bleed abstaining; Bayer and Wilson absent.

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

August 11, 1999

Members present: Bleed, Duvall, Hopkins, Krieser, Schwinn, Steward, Wallace and Wilson; Bayer absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3178; USE PERMIT NO. 122; SPECIAL PERMIT NO. 1785; FINAL PLAT NO. 98044, HIMARK ESTATES 1<sup>ST</sup> ADDITION; FINAL PLAT NO. 99015, NORTHERN LIGHTS 4<sup>TH</sup> ADDITION; FINAL PLAT NO. 99016, HIGHLANDS NORTHWEST ADDITION; FINAL PLAT NO. 99020, UNIVERSITY OF NEBRASKA TECHNOLOGY PARK 1<sup>ST</sup> ADDITION; FINAL PLAT NO. 99024, NORTHERN LIGHTS 5<sup>TH</sup> ADDITION; FINAL PLAT NO. 99025, HIMARK ESTATES 2<sup>ND</sup> ADDITION; FINAL PLAT NO. 99026, THE RIDGE 21<sup>ST</sup> ADDITION; AND FINAL PLAT NO. 99027, SHADOW PINES 1<sup>ST</sup> ADDITION.**

Steward moved to approve the Consent Agenda, seconded by Wallace and carried 7-0: Bleed, Duvall, Hopkins, Krieser, Schwinn, Steward and Wallace voting 'yes'; Bayer and Wilson absent.

**Note:** This is final action on Use Permit No. 122 and each of the final plats listed above, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**CHANGE OF ZONE NO. 3174;**  
**CHANGE OF ZONE NO. 3175;**  
**AND**  
**PRELIMINARY PLAT NO. 99009,**  
**NORTH HILLS ADDITION**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NORTH 14<sup>TH</sup> STREET AND INTERSTATE 80.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 11, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward, Bleed and Hopkins; Bayer absent.

Planning staff recommendation: Deferral of Change of Zone No. 3174 until a traffic study has been completed and the design of Fletcher has been determined; approval of Change of Zone No. 3175; and conditional approval of the preliminary plat.

Jennifer Dam of Planning staff requested to add a condition that fire hydrants be provided as requested by the Fire Department.

Proponents

**1. Kent Seacrest and Roger Severin** appeared on behalf of **Southview, Inc. and Ridge Development** for North Hills. The property has been previously annexed and zoned. The Willows project, a proposed golf course and residential community, was previously approved on this site but was not viable. Thus, there is a new vision of primarily residential along with commercial on the north. This proposal is in compliance with the North 27<sup>th</sup> Street Subarea Plan, showing a road network from 14<sup>th</sup> all the way to 27<sup>th</sup> and then down to 33<sup>rd</sup>, with commercial on the north along the south edge of I-80.

Change of Zone No. 3174 is to zone the northern part of the property as B-2, which requires a use permit. It complies with the Comprehensive Plan, but staff has requested a traffic study before they get zoning, which is the first time Mr. Seacrest has seen this requirement. Since the property is already annexed, the traffic study cannot be done at annexation and he thinks it should be done at the time of the review of the use permit because at this time, they do not know what the uses are going to be and Mr. Seacrest does not believe the Commission can do conditional zoning. The zoning is consistent and the Comprehensive Plan which shows this area as commercial. The traffic study can be discussed at the time of the use permit. They want the zoning in place so that those purchasing the residential property will know that there is B-2 in existence.

Mr. Seacrest stated that the applicants have had dialogue with Public Works and Planning. He submitted proposed amendments to the conditions of approval.

Regarding Condition #1.1.1, the applicant is agreeable to doing the right turn lane on 14<sup>th</sup> Street, but does not feel it is appropriate to do a left turn lane. Mr. Seacrest proposed adding a note on the plan that the left turn lane can be considered at the time of the use permit and accompanying traffic study. Mr. Severin added that in the short term, the left turn lane is for traffic coming from the north and there is not a population base that is going to need that left turn lane at this time. The traffic for this project is coming from the south and would only need the right turn lane.

Mr. Seacrest requested that Condition #1.1.4 be deleted, which requires an intersection at N. 15<sup>th</sup> and Morton. The plans show a 4-way intersection and Public Works did not think this was desirable, but would prefer a T-intersection. Mr. Seacrest believes that the “new urbanism” concept of circulating four-ways is more appropriate.

Mr. Seacrest also requested that Condition #1.1.5 be deleted. This requires revisions to provide adequate sight distances for N. 14<sup>th</sup> Street. Mr. Seacrest suggests that sight distance can be addressed at the time that 14<sup>th</sup> Street is built. Morton St. is platted to the west so there was no option to move Morton Street. As requested by staff two years ago, they were not allowed to move this street to improve the sight distance.

Mr. Seacrest proposed an amendment to Condition #1.1.7 regarding the round-about at N. 18<sup>th</sup> and Folkways. The applicant would propose to move the round-about over to 21<sup>st</sup> Street. They were showing a four-way intersection at 18<sup>th</sup> & Folkways, the school intersection. The applicant did not feel badly about the four-way intersection, but Public Works feels very strongly about it. Thus, in the last several hours, the staff and the applicant have looked at eliminating the four-way intersection and replacing it with a new street alignment and LPS is agreeable to the new alignment. It does change some grading and drainage patterns, but the owner is agreeable to that additional cost. To the east it is a collector width and after 21<sup>st</sup> in this plat it is tapered to residential and they want to put the round-about at 21<sup>st</sup>, with one side being collector width and the other side being residential. It will slow down traffic entering this site and leaving this site. Mr. Seacrest also proposed to add language to this condition that the round-about be designed so that a school bus can go around.

Mr. Seacrest proposed to delete Condition #1.1.8 which requires that Folkways be modified, in that it relates to the changes to Condition #1.1.7

Mr. Seacrest proposed an amendment to Condition #1.1.12 regarding the bike trail. They have decided to recommend realignment of the bike trail. They are trying to show the bike trail going to the school; however, instead of taking it around the residential lots, they want to keep it in the right-of-way of the street. That trail did get into some existing wetlands on the back of the residential lots and this can now be avoided with the new alignment. Along

Fletcher, they had shown the bike trail outside of the right-of-way but now they wish to put it in the street right-of-way and will adjust the right-of-way accordingly. The intent is to have the bike trail in the street network and not in the wetland outlot for safety purposes. This developer is also proposing to dedicate 120' of right-of-way for Fletcher. The goal is to maintain the wetland areas or mitigate. They did not want to put the bike path down the middle of the wetlands.

Hopkins inquired whether it would still be a sidewalk width trail that is adjacent to the street, rather than as part of the street. Mr. Seacrest stated that the bike trail is separate from the street and there will be green grass between the trail and the road network.

Mr. Seacrest requested to delete Condition #1.1.16 which requires the plan to show that all existing wetlands will be preserved. Mr. Seacrest advised that this developer has already mitigated and received a 404 permit. The area of wetlands that they know they will still impact is Fletcher Street and the commercial area. There are wetlands that exist that they know they will impact when they build Fletcher. Thus, the developer does not want to say that they will never change those wetlands. Mr. Seacrest submitted that the 404 permit process protects the city's interests in this regard.

With regard to Condition #1.1.18 for a conservation easement on Outlot C, Mr. Seacrest requested to move that to the "General" conditions. They will agree to the conservation easement on Outlot C, which is the wetland outlot, but they want it to be a requirement prior to final platting as opposed to before scheduling on Council agenda. The total boundary of the wetland outlot will not be known until we know where Fletcher will be located.

The addition of Condition #1.1.24 to relocate and add fire hydrants to the satisfaction of the Fire Department is in response to the Fire Department comments.

Mr. Seacrest stated that the proposed amendments are a result of conversations that the applicant has had with staff; however, the staff did not have an opportunity to review the language prior to this meeting.

Bleed inquired about delaying for two weeks to give staff an opportunity to respond. Mr. Seacrest did not want a delay because this application was once advertised a month ago so it has already been delayed; they have graded the site and it is ready to go on the market. Mr. Severin stated that they really are against a time limit in order to get water and sewer and paving constructed this year.

Steward asked for further discussion about the grading of wetlands that has already taken place. Mr. Seacrest explained that they received a 404 permit and the developer did a substantial amount of grading at the site, which is allowed by the law as long as they

comply with the 404 permit. The developer also had a neighborhood meeting and he believes overall the meeting went very well and the issues and concerns of the neighbors regarding the wetlands were addressed.

Steward inquired about the alignment of Fletcher relative to the wetlands. Whose decision is that? Mr. Seacrest explained that the the previously approved plat, The Willows, showed Fletcher going directly through the wetlands. That location was more down the drainageway, so it has been moved to the north with this plat and it may have to be moved slightly more to the north. The southeast corner is what has been graded. There were two small wetland areas disturbed but the developer had a 404 permit and they are in the process of doing the mitigation for that. Fletcher could move 20-30 feet further north in order to establish the mitigation area to satisfy the Corps of Engineers.

Wallace inquired as to the distance from the bike trail to the curb. Mr. Severin advised that with 120' of right-of-way, there should be a tremendous amount of space on the south side of Fletcher Street for the trail. Some of that will depend on the B-2 use permit to the north and the kinds of uses. This is as wide or wider right-of-way than any other arterial in the city. Mr. Seacrest pointed out that Condition #1.1.12 indicates that if staff does not think the bike trail fits within 120', they will adjust the outlot width.

Mr. Seacrest acknowledged that there is still some coordination to be done regarding the final location of Fletcher Street. It's all conceptual at this point.

Schwinn did not understand why the staff does not want a four-way stop next to the school. Mr. Seacrest stated that this was a decision by Public Works. Mr. Severin believes the rationale is that with the T- intersection, it is usually clear that one leg of the T has to stop. With the four-way stop, it is a concern as to who has the right-of-way.

Bleed asked the applicant to explain more about the four-way stop in the "new urbanism" design in the southwest corner. Mr. Severin clarified that this project is not a "new urbanism" design. The point was that in "new urbanism", you do have four-way intersections.

### Opposition

**1. John Reimnitz**, 5231 Valley Forge, testified in opposition. He does not understand the concept of the CUP and the recreation plan, playground equipment, etc. Is the recreation plan simply the school? In April, a letter from the Planning staff asked for the wetlands, tree masses and natural drainage areas to be preserved. And in the meantime, the developer has gotten the 404 permits and removed what they wanted to. He believes this is in direct opposition to the revisions requested in April by the city. He suggests this is "end around" – doing the paper work to get done what you want. Mr. Reimnitz would like to see more open space established. With regard to the detention cell area, there is no mention about the performance of the detention pond or provisions to keep it dry. There

is concern for small children if this pond is not drained adequately. If this plan should not go forward, there needs to be some reseeding to prevent erosion.

### Staff questions

Schwinn asked for staff comments about the four-way stops by the school. Dennis Bartels of Public Works advised that in general, from a traffic point of view, the city prefers not to have four-way intersections because it means an additional conflict point. A three-way intersection is 25% less conflict points as far as vehicular and pedestrian traffic. In this case, being adjacent to a school, we would anticipate a lot of pedestrian traffic. The original plan showed a circle and without many of those in Lincoln, the staff did not know how confusing that might be. Compounding the conflicts for the cars and pedestrians at this location is a concern. If a collector street gets too long or too wide, the traffic tends to violate the speed limits. In the short term, until Fletcher gets extended, with all the commercial on 27<sup>th</sup> Street, Folkways through this neighborhood has a lot of potential for becoming the back door to those living close to 14<sup>th</sup> on the west edge of this plat. The staff is anticipating Folkways as a local street, then as a collector as you get further east, and it might be heavily used. Therefore, in combination with the pedestrian traffic and additional conflict points, the city does not like to put stop sign control in a residential neighborhood or local street situation if it can be prevented. You prevent it with the T-intersections.

Bleed asked for an explanation of the change in the open space and tree mass requirements. Jennifer Dam of Planning staff explained that the developer had withdrawn the community unit plan; however, it will come forward again on the next agenda because there are about 12 duplex lots that need reduction in the lot area. In general, the developer submits the plans; staff reviews those plans and sends a letter to developer indicating what revisions are necessary. In that letter, staff recommended that the drainage area and natural tree areas be retained. The developer opted to go ahead and grade the land, against the staff recommendation, taking the risk that the plat would be approved as proposed. Unfortunately, the city does not have a land disturbance ordinance so the owner is within his right to grade the property. There are significant areas of wetlands that are being preserved, however.

Ms. Dam went on to state that there have been some changes since the plans were first submitted, primarily in the street location. The detention did have a wetland area and some trees, and that area has not been preserved as recommended by staff. Originally, Folkways Blvd. came straight through and staff objected to that. The developer breaks that up even more with the proposal presented today. They did get a 404 permit for the areas that have been filled to date.

Steward disagreed with the staff's point of view regarding T-intersections. The whole idea of new urbanism and the four-way stop is to give pedestrians more right-of-way than automobiles, and the T-intersection invites higher speed on the long leg as well as the lack

of respect for the intersection and pedestrian right-of-way. He thinks it is a debatable point. Mr. Bartels agreed that we may have more intersections in new urbanism but we need to be careful how we design our street systems. Local streets are designed to minimize the traffic where you can have the four-way intersections, but we need to be more careful with the collector streets. It is a "system" issue. Mr. Bartels agreed that Steward's point is well taken and he understands. Mr. Bartels is not sold on the four-way at 15<sup>th</sup> & Morton, but he did not see a lot of alternatives given the constraints there. Mr. Bartels is willing to agree with Mr. Seacrest's amendment on the 15<sup>th</sup> & Morton intersection.

Ms. Dam stated that she is not comfortable with all of the amendments. Staff would prefer to see the bike trail outside of the Fletcher Street right-of-way. The Comprehensive Plan shows Fletcher as 120' of right-of-way. The whole area from 14<sup>th</sup> to 27<sup>th</sup> north of proposed future Fletcher is all commercial. The initial traffic figures are showing numbers significantly higher than anticipated. No. 27<sup>th</sup> is quickly reaching capacity and will need to be six lanes in the future. The 120' is something that will definitely be needed in the future.

Ms. Dam also stated that the staff position remains to defer Change of Zone No. 3174 because we need to know the impact of the development so that we know how many lanes are needed. If the bike trail is left in the Fletcher Street outlot, that bike trail will not be put in until Fletcher Street is put in. The trail could go in at the same time as the residences if it is outside of the street right-of-way. It would be more appropriate for the trail to be located in the residential outlot. The minimum right-of-way for the bike trail is 10' of pavement. Staff believes that Fletcher will require the 120' anyway and the bike trail should be at least an additional 10'.

Schwinn referred to the Game and Parks comment that they do not want the bike path going into the wetlands. Ms. Dam clarified that the concern of Game and Parks is the segment which ties into the residential area. Their concern is the impact on the wetlands. That section is already shown as graded and it will not impact the wetlands. The Game and Parks concern is addressed by Mr. Seacrest's proposed amendment.

Ms. Dam is not sure the staff and applicant will come to agreement on Condition #1.1.12 (the bike trail). Mr. Bartels agreed with the amendments to #1.1.3 and #1.1.7 and the deletion of Condition #1.1.8. He is concerned about the remaining amendments. At this point in time, the city has not identified in the CIP any improvements on No. 14<sup>th</sup> Street. The subarea study on this whole north area projected traffic between 14<sup>th</sup> and 27<sup>th</sup> to justify multiple lanes on Fletcher and 14<sup>th</sup> sometime in the future. He gets real concerned begging off on the question of who pays for the improvements to 14<sup>th</sup> St. He does not want to rule out the possibility of the city and developer taking care of that sight distance problem. The problem with tying the traffic study to the use permit is that the applicant testified they may not even come in with that B-2 use permit. Then we've lost all

opportunity to share the costs. Those improvements are necessary in his opinion--taking care of the sight distance and left and right turn access potentially at Morton--whether it's a city cost, developer cost or shared cost.

Ms. Dam does not want Condition #1.1.16 deleted, which requires preservation of existing wetlands. She suggested that the developer could come back through the public process if that changes. At the early part of this phase, they got the 404 permit. If this condition remains in place, the public will have an opportunity to comment if there are areas of wetlands in the northeast that are impacted. It is a notation on the plan that the existing wetlands will be preserved.

Hopkins asked for further discussion about deferring the change of zone until the traffic study is completed. Ms. Dam's response was that currently, she understands that a traffic study is being conducted on the area between 14<sup>th</sup> and 27<sup>th</sup> for a commercial area. The traffic numbers can vary somewhat based on the uses. In order to figure out the size and width of improvement needed for Fletcher, it will be necessary to have some idea of these numbers. It is necessary to make some assumptions on uses. She explained that typically, the use permit comes through at the same time as the change of zone so that we can see what the impacts are. Mr. Bartels offered that it leaves a lot of room for discussion and argument when reviewing a traffic study and trying to make assumptions on the maximum use. The traffic study would be based on the zoning as opposed to what it might be realistic to build. If you had a traffic study and could identify lanes and access points, you can pin the right-of-way down better.

Ms. Dam agreed with the proposed amendment to Condition #1.1.17.

With regard to safety of the detention cell, Mr. Bartels commented that this particular plan has as much detail as we might expect on any other detention cell. The basic assumption is that the detention cell is to drain dry. There is nothing unusual about this situation. The concern is real. The intent is to have positive slope across the detention cell so that it will indeed drain dry. It is not intended to be a detention cell that will hold water; however, there might be times during construction that it will hold water for sediment or erosion control. Once the development is done, he assumes that it will be designed to drain dry according to city standards.

#### **Response by the Applicant**

Mr. Severin agreed with Mr. Bartels' comments regarding the detention cell and he confirmed that it will drain dry and they will comply with all standards.

With regard to the wetlands in the southeast corner, Mr. Seacrest clarified that they did get a 404 permit and did remove 15% of the overall wetlands. The southeast corner was



originally going to be park land. LPS thought they would locate their school down at that corner. It was ultimately left with this developer and they decided to move the wetlands and put them all together.

Mr. Seacrest agreed with the Game and Parks comments.

Seacrest indicated that the developer will talk about that left turn lane if they do commercial, but if they do not do commercial, they should not have to talk about the left turn lane during the review of the use permit.

With regard to Condition #1.1.12 and moving the bike trail, Mr. Seacrest stated that they are not trying to get out of the widths. But if they are giving 120', they want to put the trail in the 120'. If staff concludes they need extra width, the conditions are worded as such. Mr. Seacrest wants the city to maintain the bike trail on their right-of-way.

With regard to deleting Condition #1.1.16 to preserve the wetlands, Mr. Seacrest does not believe there is any legal basis for this condition. It adds a new process that is not in the ordinance. These wetlands can be discussed at the time of the use permit. Mr. Severin suggested that typically, it is much more economical for the developer to leave the wetlands alone because for every acre disturbed, they must replace with 1.5 acres, and most developers don't like to do that. There are instances where this development impacts a portion of the wetlands and it may be nothing more than a street crossing. We know we have an obligation to protect them as much as we can.

With regard to the change of zone to B-2, Mr. Seacrest would rather put the neighbors on notice that there will be retail zoning. Whatever conditions, traffic or otherwise, will be required at the time of the use permit. Mr. Severin does not believe the city has lost any teeth—this development has dedicated a lot of right-of way.

Public hearing was closed.

**CHANGE OF ZONE NO. 3174**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 11, 1999

Steward moved approval of the change of zone, seconded by Wallace.

Bleed will vote in favor, because she is persuaded by the argument that it is in the Comprehensive Plan and it makes sense to put neighbors on notice that this area will be commercial.

Motion for approval carried 8-0: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward, Bleed and Hopkins voting 'yes'; Bayer absent.

**CHANGE OF ZONE NO. 3175**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 11, 1999

Schwinn moved approval, seconded by Steward and carried 8-0: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward, Bleed and Hopkins voting 'yes'; Bayer absent.

**PRELIMINARY PLAT NO. 99009, NORTH HILLS**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 11, 1999

Steward moved approval, with the amendments as requested by the applicant, seconded by Wilson.

Steward believes that the proposed amendments are bound in reason and that there is every justification to accept the amendments. He is concerned about the wetlands, however, and he believes some future consideration needs to be given to changing the ordinance that allowed this preliminary work to take place. But, that is a separate issue and is not relevant here. The two amendments he is less sure about are #1.1.4 and #1.1.5, but they relate to the additional future traffic planning and he has confidence that those will be taken into account when that planning is accomplished.

Bleed stated that she has mixed feelings about some of the changes, especially when they come forward at the last minute. She has concerns about some of the traffic issues. It is frustrating that the change of zone cannot come forward at the same time as the use permit. It will be an important intersection as this area develops; however, she will vote in favor and trust that the process will take care of some of these problems when the use permit comes through.

Motion for conditional approval, with amendments as requested by the applicant, carried 8-0: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward, Bleed and Hopkins voting 'yes'; Bayer absent.

**SPECIAL PERMIT NO. 1787**  
**FOR A MULTIPLE USE COMMUNICATIONS TOWER**  
**ON PROPERTY GENERALLY LOCATED AT**  
**SUN VALLEY BOULEVARD AND THE MOPAC RAILROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 11, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Steward, Bleed and Hopkins; Bayer and Duvall absent.

Planning staff recommendation: Denial, but revised to Conditional Approval with applicant's agreement to move the tower to the southeast corner of Lot 70.

Proponents

**1. Mark Hunzeker** appeared on behalf of **Titan Towers, L.L.C.** They have had discussions with Public Works and Planning staff this week, which he believes have resulted in a satisfactory compromise. The area of the original application is in the corner of the triangle formed by the Union Pacific Railroad, the Missouri Pacific Railroad and Sun Valley Blvd. They have reviewed possible alignments of 1<sup>st</sup> Street with Public Works. At this time there is no real engineering that has been done other than just looking at a generalized corridor for a project there. The Nebraska Department of Roads has a Sun Valley Blvd. project on the horizon for the year 2008, so there is a certain amount of serious concern on their part about where and how this will line up.

Mr. Hunzeker advised that the applicant has agreed to move this tower and the accessory building to the southwest corner of what is Lot 70, so that it would be in the southwest corner of the irregular tract that was advertised. Mr. Hunzeker believes that staff now concurs that the Planning Commission should approve this application, subject to conditions, with the following amendments:

Strike Condition #2.1 and add new #2.1: The site plan shall be revised showing the tower and accessory building located at or near the southwest corner of Lot 70, I.T., as feasible, with the east/west dimension of the permit area to be no greater than 75'. The revised site plan shall also include a new metes and bounds legal description for the permit. Both site plan and legal description shall be to the satisfaction of the Public Works Dept.

Add Condition #3.5: The tower shall comply with all applicable FAA, NAA and FCC regulations.

Mr. Hunzeker advised that the proposed tower has already been approved by FAA for the previous location. It is his understanding that within 175' in about any direction of that location, the FAA will routinely grant an administrative amendment to that approval.

Mr. Hunzeker also noted that this is one of those situations where there has been a lot of controversy and discussion about why we don't have cellular and/or broadcast and other users sharing towers. This is a project which will provide a tower in a location which is out of any residential area; out of the Capitol View corridors; and generally not in an area that is likely to be developed with other uses and will be available and is being constructed for the purpose of leasing space to other users. Mr. Hunzeker believes it is a good project and something that will serve the community and not cause too much trouble in the process.

Steward inquired why this tower needs to be in the city. Hunzeker understands that there is limited range available for a lot of those uses, whether cellular or PCS, etc. There needs to be regular spacing, particularly for PCS, in order to have seamless coverage.

Laddie Galloway, representative of Titan Towers, the applicant, advised that Titan Towers is not a carrier, just a tower company serving national and local carriers, encouraging and promoting collocation.

Wallace inquired about the ground equipment. Mr. Galloway advised that the communication shelter is something like a 12 x 20 one-story building, housing communication equipment with the coax running out of the building and up the tower.

### Opposition

**1. Rick Wiese**, 730 Pier 3, who owns businesses across the railroad track, consisting of three buildings, feels very strongly that a 300' tower next to a highway has safety concerns. Towers ice up and when that melts that ice can very well be blown by the wind several feet. The proposed tower is detrimental to the people in the back yards of commercial areas in West Gate Park. He does not believe 300' towers should be built within the City Limits. He would like to see the plot plan for the specific location. If it is the Mills property, it has been wetlands that has been filled illegally with big pieces of concrete, etc. He does not believe they could get proper footings with there being one to two feet of fill dirt over the rubble. He does not want to see a tower this size built next to his commercial property.

### Staff questions

Steward inquired about the tower exceeding the 75' limit above the ground elevation. Jennifer Dam of Planning staff explained that this area is in the airport protection zone, There is a 75' height limit, so to construct a tower above that limit they would need a variance from the Board of Zoning Appeals. When the applicant first proposed the tower, they did not have the study from FAA. The FAA did their study and approved the tower at a 310' level, indicating it would not interfere with aircraft. Ms. Dam stated that she talked with the person who did the study for the FAA and confirmed this information.

Steward commented that there are also height limitations in the city relative to the Capitol View. Ms. Dam advised that this location is not in the Capitol View corridor. But, Steward

believes there were two aspects of the downzoning that took place to protect the Capitol. One was height of buildings and structures and the other was the specific view corridors. Ms. Dam again stated that this location is outside the view corridors and outside the area of the height restrictions. The height of this tower does not impact the views of the State Capitol building. Steward knows that specifically downtown the structures must be at certain heights. Ms. Dam confirmed that in the Capitol Environs District, the height of certain buildings in that area is restricted; however, this location is outside of that district. The tower will be a galvanized tower with white strobes during the day and red strobes at night.

Wallace inquired about the depth of the footings. Ms. Dam indicated that issue would be dealt with at the time of building permit, not the special permit. Footings are allowed on this property and they would be required to meet all floodplain regulations.

Ms. Dam explained that staff had recommended denial primarily because of the alignment of Sun Valley and 1<sup>st</sup> Street. The applicant has agreed to move the tower accordingly. Therefore, the tower location is in conformance with the Comprehensive Plan.

Ms. Dam also agreed with the proposed amendments to conditions of approval as stated by Mr. Hunzeker.

Hopkins finds it interesting to talk about this while we have a moratorium on other things that are visual. Ms. Dam suggested that this particular tower is being built to accommodate high definition television as well as cellular carriers. We have three other wireless communication carriers coming into the Lincoln market and the city is in the process of developing a wireless communications ordinance which she anticipates bringing forward in October.

Steward wondered whether that ordinance will deal with towers and transmission facilities. Ms. Dam advised that it deals with towers and encourages more aesthetic locations of antenna. We cannot prohibit towers, but we will attempt to guide them toward industrial areas. Steward believes we are being controlled by technology.

#### Response by the Applicant

Mr. Hunzeker agreed to modify Condition #2.5 to simply say that they will provide a landscape plan to the satisfaction of the Director of Planning.

Mr. Hunzeker also offered that towers are something that are a fact of life now. He ventures to guess that most of us in this room have some form of cellular and/or digital communication device in our families. The more of those devices that are out there, the more towers are necessary to serve the people who have them. To the extent that we can collocate those antenna on a tower is something we have talked about since the first cellular tower was built in Lincoln. The fact that this is coming forward at a time while the

city is considering an ordinance dealing with towers is not odd at all. It is part of the object of that ordinance to force consolidation of those users onto as few towers as possible. This is a company that is in the business of providing that service and, on a national level, many of the cellular and PCS carriers are selling their towers to operations similar to Titan Towers simply to off-load that capital expense and to put the maintenance responsibilities onto people who are in the business of solely owning and maintaining these towers.

Mr. Hunzeker went on to state that this is a really good location notwithstanding the testimony in opposition. It is several hundred feet away from any of the buildings in the West Gate Industrial Park and there are almost no residential uses within view. It is one of those places where we will be hard pressed to find a better location.

Hopkins asked the applicant to respond to the concern about the ice on the tower. Mr. Galloway responded, stating that every area in the country is zoned for wind load and ice load and those specifications are followed by the tower company. The tower is built to withstand the wind and ice loads. By moving back further into the property, the blowing ice should not be as much of a problem for Sun Valley. Usually, the ice melts when the sun comes out and the wind calms. The tower company is normally not worried about projectile of ice. It usually just falls straight down.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 11, 1999

Bleed moved approval with conditions, as revised, seconded by Wallace.

Bleed believes this kind of tower is a necessity in our new lifestyle whether we like it or not. It looks like they have done a good job of siting this tower out of the Capitol Environs. It is better to put it in a commercial area rather than residential.

Steward stated that he will vote against the motion on the principle that he challenges the issue that we have to accept technology in the community. It is a case of "be careful what you wish for" when we talked about collocation and now we have it. All of a sudden we have 300+ ft. towers that in the aggregate are going to be an eyesore on the community. The circumstance is beginning to get a little bit like liquor licenses—it comes to us and we have to accept it because it's a fact of life. With the new ordinance being crafted, if he had his preference, he would suggest waiting for that legislation.

Motion for approval, with conditions, as revised, carried 6-1: Wilson, Schwinn, Wallace, Krieser, Bleed and Hopkins voting 'yes'; Steward voting no; Bayer and Duvall absent.

**CHANGE OF ZONE NO. 3194**  
**AND**  
**MISCELLANEOUS NO. 99009**  
**TO AMEND THE ZONING ORDINANCE AND**  
**LAND SUBDIVISION ORDINANCE TO**  
**INCREASE FILING FEES.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** August 11, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Steward, Bleed and Hopkins; Bayer and Duvall absent.

Proponents

John Bradley, Interim Director of Planning, prepared had previously submitted a memorandum at the request of Commissioner Steward regarding the percent of the Planning Department budget dedicated to land development and subdivision activities; what percent of the office budget was reinforced by the application fees received; and what percent of the development activities of the staff was reinforced by those fees collected. The numbers show that of a 1.2 million dollar office budget, \$414,700 of that budget is used for the land use section, which is the section that reviews the applications and prepares the staff report, etc. That is 33% of the overall Planning Dept. budget. The \$79,900 of application fees collected in fiscal year 97-98 would amount to 6.4% of the overall budget of the office and 19.3% of the budget of the land use section, excluding the amount of staff time allocated to working with the general public on counter duty and phone calls. Adding the proposed fee increase to these figures would increase the application fees collected from \$79,900 to \$156,374; that would elevate the overall budget 12.6% and would be 37.7% of the land use section expenses dedicated to land development and subdivision activity.

Steward appreciated the additional information as it gives us much clearer picture of the proportion of income and cost. Mr. Bradley indicated that he did not inflate the volume in his projections.

There was no testimony in opposition.

**CHANGE OF ZONE NO. 3194**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 11, 1999

Steward moved approval, seconded by Schwinn.

Bleed stated that this is her last Planning Commission meeting as a Commissioner and she wanted to make the comment that planning has been, and she hopes will continue to be, very important in the future. In the past, planning has done this community well. Over the

years, she has seen the work load of the Planning staff increase; the expectations of the staff have increased; and the staff itself has decreased. This is long overdue.

Motion for approval carried 7-0: Wilson, Schwinn, Wallace, Krieser, Steward, Bleed and Hopkins voting 'yes'; Bayer and Duvall absent.

**MISCELLANEOUS NO. 99009**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 11, 1999

Bleed moved approval, seconded by Krieser and carried 7-0: Wilson, Schwinn, Wallace, Krieser, Steward, Bleed and Hopkins voting 'yes'; Bayer and Duvall absent.

**COUNTY SPECIAL PERMIT NO. 169**

**FOR A RECREATIONAL FACILITY (GOLF COURSE)**

**ON PROPERTY GENERALLY LOCATED AT**

**N.W. 140<sup>TH</sup> AND WEST HOLDREGE STREET.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 11, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Steward, Bleed and Hopkins; Bayer and Duvall absent.

Mike DeKalb of Planning staff submitted a letter from Edna Whitney in opposition.

**Proponents**

1. **Mike Rierden** appeared on behalf of the applicant and again submitted the written information he gave to the Commission two weeks ago, the key issue being the letter from Nickel Engineering indicating that based upon their calculations, with utilization of surface rather than groundwater, there would only be an augmentation of groundwater of approximately 8% in the worst case scenario. In addition, the information indicates that there are situations because of recharge from the ponds where they would recharge more than they would utilize.

Mr. Rierden also pointed out the letter from a property owner concerning past usage of an irrigation well on the property and they have had no problems.

Steward asked Mr. Rierden whether his client has discussed any consideration for water conservation measures over and above what was presented two weeks ago. Mr. Rierden submitted a letter from the golf course architect explaining how they would utilize certain turf grasses and where they would place the areas to be irrigated.

Bleed inquired as to the total acre foot usage on the golf course in a normal year and dry year. Steve Nickel of Nickel Engineering advised that the total water usage projected for this golf course is 228 acre feet per year. That is irrigating 140 acres, at roughly 1.5' of



irrigation water on the irrigated portion in any given year. That is total usage. That would be reduced somewhat by any rainfall. In a dry year, you would have to augment, and in a wet year you probably would not have to augment, depending on how the rain came. The owner has decided to take advantage of a second stream that merges with the stream discussed on this property and divert water at the downstream from the combined streams. The second stream has a drainage area essentially the same as the first, so we are looking at about 220 acres of drainage area. This is about a third of the drainage area of Twin Lakes, which supports a 260 acre lake.

Mr. Nickel discussed the geology of the site.

Bleed inquired as to what extent the recharge will continue. Mr. Nickel stated that as time goes by, if water builds up, there will be a decrease in that amount; however that could be tapped into with a shallow well. The quantity that he used was 1/8 inch per day, which is the sewage lagoon upper limit, so we're looking at a pretty tight bottom anyway.

If for some reason Mr. Nickel's calculations in a dry period were wrong so that they did not have sufficient water in the pond to meet 92% of their needs, Bleed wanted to know what, if anything, would prevent them from pumping the well more than they are expecting to. Mr. Nickel stated that there is nothing physically that would restrict that, but the owner has the same goal in mind as far as the aquifer is concerned; that is, if the owner were to pump salt water it would kill the golf course and that's a pretty strong incentive.

Bleed inquired whether they have explored the problems involved with the Endangered Species Act in getting their surface water permit. Trent Anderson, the owner, advised that the Dept. of Water Resources has told him that he has to wait until Game and Parks comes to some sort of agreement regarding the Endangered Species Act. Their opinion was that he should be able to tap into that. Bleed asked whether the applicant would have a problem conditioning this permit upon a permit from the Nebraska Department of Water Resources. Mr. Anderson concurred. Bleed explained that the federal Endangered Species Act is requiring a certain level of flow on the lower Platte River. At this point in time it is very difficult to get a surface water permit for tributaries into this portion of the Platte without mitigation. There is an attempt to work with Game and Parks to come up with a plan to offset and deal with these types of uses. Bleed is concerned about permitting something where you end up not having a surface water permit, and then have to rely on a groundwater well and we cannot restrict what that groundwater well would pump. The potential impact on other wells is a concern to her.

Steward inquired whether the calculations on the 228 acre feet are based upon the new landscaping standards that we are yet to see, or are these some sort of national standards? Mr. Nickel advised that the 228 acre feet was provided by the golf course architect as an indication of the total needs for the original proposed course. Steward confirmed that those numbers do not account for any new strategies for landscape materials. Mr. Nickel concurred.

Rierden submitted a letter from the golf course consultant stating that native grasses will be used extensively in the out-of-play areas. He also submitted the results of a test well that the applicant just had done July 22, 1999, by Strader Blue Valley Drilling. There was an abundance of water in the area. There is a 20' layer of clay between any possible salt water and non-salt water. Thus, in Strader's opinion, there is almost no chance or nearly impossible to draw the salt water through the clay layer.

### Opposition

**1. Kevin Lostroh** testified in opposition. He met with the Dept. of Water Resources. There are two streams going into the property—in the one to the west there was a flow of 31.42 gallons per minute and 17.95 gallons per minute from the one flowing from the north. He also took a flow reading downstream of Diamond Head at 49.37 gallons per minute. There is no gain of water in the property. This is less than 50 gallons per minute during a wet year. He does not see how they can figure on as much surface water as they are anticipating.

In a meeting with the applicant, the property owners were told that there is one irrigation well, and in a letter to the Director of Planning, it states there are two irrigation wells and two domestic wells. He has a question about this conflict.

**2. Larry Minzel**, 11800 W. Holdrege, testified in opposition. As to the streams coming in, he put a gravel dam across with pipe under it and let it sit for three hours. Since we did not have rain, there were 2 gallons per minute coming through. Yesterday there was 17.65 gallons coming through. Below it was 49.37 gallons per minute. The water coming through will keep the streams running better down below, so if we don't have that water running through the springs will have to take over and without that 50 gallons coming through it will hurt them.

**3. Rhonda Page**, who is building a home on N.W. 140<sup>th</sup>, testified in opposition. She grew up in this area. She displayed pictures of the width of the stream on her grandmother's property at 2.5 ft in width and 4 inches deep. She did not do any scientific measurements as to water flow, but this particular creek is between site 1 and 2 of the map shared by Mr. Lostroh. She is concerned in that the water study stated that existing wells were not suited for domestic use and the applicant intends to have a restaurant on the premises. Wouldn't there be a new well for the restaurant use? She talked with the Department of Water Resources and the existing wells are not registered and are thus termed "illegal" wells. If they have been used in the past for irrigation purposes, they need to be registered. Ms. Page does not have documentation that the wells are illegal but she received this information from Susan France at the Department of Water Resources and Glenn Johnson of the Lower Platte South NRD. Ms. Page submits that this is agricultural land.

**4. Mark Hunzeker** appeared o behalf of a substantial group of neighboring property owners in opposition. Based on one self-study and one done by The Department of Water

Resources recently, Mr. Hunzeker submitted that the surface water flowing onto the site will not provide even half of the proposed irrigation. The numbers that have been laid out in the Nickel report indicate that only 8% of the water for irrigation will be from groundwater sources, but the amount of water flowing into the site as measured recently within a few days of a rain indicates that not even half of the water necessary to irrigate this site will be generated from surface water. These numbers do not attempt to account for evaporation in the pond. It is important to read carefully the letter from Nickel Engineering. The amounts of water referred to are based upon projections and assumption—they are not based upon actual measurements. The assumptions used are felt to be conservative, resulting in potential underestimated stream flow, but the second paragraph refers to the average flow being predicted to be 1.6 acre fee per day. The actual measured flow is less than half of that. The photographs indicate the flow levels. During a dry period this stream will dry up. The applicant admitted that they have no measured stream flows and acknowledged that flow into the property was less than 60 gallons per minute, which is substantially less than they are projecting as being the amount of surface water they intend to use to irrigate the golf course.

Mr. Hunzeker also suggested that the testimony regarding the geology and underlying salt water is generally under-buffed. There has been testimony today that it is unlikely that it can draw the salt water up through the clay level, but there has been testimony to the contrary in previous hearings.

Mr. Hunzeker urged that the burden here is on the applicant. This is a special permit and the burden is on the applicant to show that they are entitled to the special permit and that the property surrounding this use will not be adversely affected. The applicant must perform in accordance with the representations that have been made. The evidence indicates that the applicant represents that only 8% of the irrigation needs will come from groundwater, but that representation is based solely on predicted flows for average years. The actual measurements this last week in an above average year for rainfall, shows less than 50% of the predicted average flow. Using the applicant's assumed evaporation and seepage rate, less than 40% of the predicted average flow would be available for irrigation of the golf course. Mr. Hunzeker contends that there is enough evidence to show the applicant has not demonstrated that they can develop and operate without significant risk to abutting property owners and, therefore, requested denial of the permit.

Approximately 30 people stood in the audience in opposition.

Hopkins asked staff whether anything has changed since the initial staff report. Mike DeKalb of Planning staff stated that a condition could be added such that the drawings will be revised and approved by the Health Department with regard to the restaurant use. Mr. DeKalb also suggested that a condition be added in response to the letter from the Seward County Engineer requesting road improvements. There has been a lot of discussion on water and it may be prudent to add restrictions to attempt to address the issues raised.

Bleed is concerned about the potential problems if the water is insufficient or if they do not get a surface water permit. What, if any, legal resort would the county have to restrict groundwater pumping? What can we do to control pumping? Diane Staab, on behalf of the County Attorney, was not aware of any way the county can control the amount of water that the golf course would be using. Once the permit is issued, the county does not have much control over the amount of water that is used. Bleed wondered if the permit could be conditioned as far as water usage for irrigation of the golf course. Ms. Staab indicated that it could probably be suggested that they could only use irrigation for a certain portion of the property. Bleed asked if there would be any kind of condition to preserve impact on the domestic wells. Ms. Staab stated that she would not be comfortable with such a condition. Who would monitor it? How would you control it?

Response by the Applicant

Mr. Rierden explained that the letter originally written to Mr. Bradley about the number of wells is incorrect. There is one irrigation well, one domestic well and one other domestic well that has been capped. If a restaurant were there, it would use the current domestic well. They have received approval from the Department of Water Resources just recently.

Mr. Rierden reminded the Commission that he understood that the purpose of this third hearing was for the opponents to present some empirical expert evidence. The applicant has done this and has supported their findings with expert testimony. He has not heard any expert or empirical evidence that would counter this information. At the first hearing the opponents presumed that this applicant would be using groundwater as the main source of irrigation, and that was incorrect. And now they are objecting to the surface water. Mr. Rierden submitted that the real issue is not the water, but the proposed use as a golf course. The applicant has presented and satisfied the environmental concerns; they have had a wetlands assessment, indicating that there is no problem; the Corps of Engineers has issued and granted a 404 permit; the applicant has made application to the Department of Water Resources and will agree to any sort of condition about the permit being dependent upon obtaining the necessary permits from the Department of Water Resources.

Mr. Nickel rebutted with regard to the measurement of stream flow. The characterization of this as a wet year is correct but this measurement was made at the end of an extremely dry month. In some years there is going to be enough water and in some years there will not be enough. If this is about as dry as a July has gotten, being able to have half of the irrigation need met from the stream is approximately what we were talking about for a dry July. The 8% is not per month or per year, it's an average over a 10-year period. As far as the letter from Mr. Nickel, that was done before it was decided to use both streams, and the numbers in that letter are based on regional correlations and experience. The numbers as far as how much is needed using the two streams comes out to about half of that. This is on a large scale and these numbers are backed up by the fact that Twin Lakes stays full

with water in the same geologic setting and in the same neighborhood. Using those same amounts of water you come up with the numbers he provided previously.

Tom Strauss rebutted, stating that the present condition on the land is agricultural. Some of the concern is how to protect the outlying areas. They did some preliminary work on a well drawdown to determine the radius of influence. At 1,000 ft., given the general condition of the aquifer, they were finding no drawdown from the well outside of 1,000 ft. They were pumping 12 hours. If you take an influence of 12 hours versus 1.5 in the pumping time, you are seeing that the radius of influence is probably 1/3 less than what it was under the present kind of condition. There is groundwater flow from north down to the east, and during a down period of the well, the well will recharge itself. We are looking at pumping shorter periods of time and less water per day or per week, avoiding that critical condition which is influencing other wells in the area. Some of the wells in the area are one or two drainage paths over. He does not believe this development will influence the other wells. The location of the well is about as far as they can get from any neighbor. The one stream being the sole source of surface water is a barrier between that and a lot of the adjoining properties to the north.

Schwinn wants to know what happens in a purely agricultural situation in a drought period when everyone is pumping their irrigation and they run out of water. Bleed stated that the crops dry up and the domestic wells dry up.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 11, 1999

Bleed moved to deny, seconded by Steward.

Bleed acknowledged that this is not an open and shut case. It is a situation where she would like more information on the geological situation and the flows; however, she does place a lot of faith in people who have lived in the area over a long period of time and their experience. We have come through a fairly wet period. The flows in these little branches are small. Yes, we could have some over land runoff that might fill the ponds in wet years, but she is worried more about the dry years and the years when domestic wells may have trouble even without the golf course. She believes Mr. Hunzeker is correct that the burden of proof is on the applicant to show that the use of water will not adversely affect the existing well owners. She does not believe that burden has been met. If, however, this permit goes forward, there needs to be a condition that the permit is only valid as long as the applicant gets a surface water permit from the Dept. of Water Resources. She does not know of any way to restrict the amount of groundwater pumped to the golf course if they should need to irrigate with wells.

Wallace believes this is a quality of life issue and other issues—not just a golf course or person's right to develop. The public health and safety are involved and the Planning

Commission's charge is to listen to the evidence on that measure. There has been empirical data presented but he does not believe it is totally conclusive. It is not factual. He weighs the evidence of testimony of experience and the number of years the people have lived on these farming operations and he believes their testimony to be true. Until it can be proven otherwise empirically and beyond a shadow of a doubt that it will not affect the health, safety and livelihood of the neighbors, he cannot consciously vote in favor of this permit.

Steward believes there are some additional concerns dealing with a potentially sensitive environmental issue. We know from experience that this part of the county has had historic water problems. We have heard it. We have living evidence that it is a present and consistent concern. We also know that we are changing land use in the middle of an environment that is largely agricultural production land. He will vote against the permit on the basis of probable cause for net impact. In the environmental issues there are circumstances when we have to use our judgment. We find water here and there, but the people who live with it from year to year are the best testimony. He appreciates Diane Staab's statement that we have the responsibility as a Commission to hear testimony, to review evidence and to make a determination of whether it has a potential net consequential impact on the community. He believes he has heard enough evidence that it does have such an impact.

Motion to deny carried 7-0: Wilson, Schwinn, Wallace, Krieser, Steward, Bleed and Hopkins voting 'yes'; Bayer and Duvall absent.

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It was noted at this point in the meeting by Chair Hopkins that this is Ann Bleed's last meeting as a Planning Commissioner and she expressed good wishes and appreciation for her dedicated and loyal service over the past 10 years.

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**COUNTY SPECIAL PERMIT NO. 170,**  
**HILLTOP ESTATES COMMUNITY UNIT PLAN,**  
**AND**  
**COUNTY PRELIMINARY PLAT NO. 99018,**  
**HILLTOP ESTATES 1<sup>ST</sup> ADDITION,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SO. 82<sup>ND</sup> STREET AND PELLA ROAD.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** August 11, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Steward and Hopkins; Bleed, Bayer and Duvall absent.

Mike DeKalb of Planning staff submitted two letters for the record. One addressed to Brian Carstens from Vince Dreeszen dated August 10, 1999, with regard to the concerns of Darrell TeSelle regarding land fill and dirt work by the railroad. Mr. Dreeszen compared the elevations from the Firth topographic quadrangle and the "grading plan" present-day topographic map of Hilltop Estates. He has also visited the site. He found that surface drainage and the direction of groundwater flow has not changed substantially. There is absolutely no reason to believe or even suspect that the land fill and grading has had any effect on Mr. TeSelle's property, including causing a wet basement or odor in his drinking water.

The second letter is from Trev E. Peterson, on behalf of the BNSF railroad, indicating that the developer has agreed to insert language in protective covenants covering all of the property north of Pella Road and all, or substantially all, of the property south of Pella Road that would prohibit lot owners from materially altering the drainage that would result in an increased volume or increased velocity of water being drained onto the BNSF right-of-way. The developer has also agreed to prohibit landowners from making any alteration to the berm located along the east side of the development. Thus, the BNSF has no further objections to the proposal.

Proponents

1. **Brian Carstens** appeared on behalf of Bill Carlson to answer any questions.

There was no testimony in opposition.

Public hearing was closed.

**COUNTY SPECIAL PERMIT NO. 170**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 11, 1999

Schwinn moved approval, with conditions, seconded by Krieser and carried 6-0: Wilson, Schwinn, Wallace, Krieser, Steward and Hopkins voting 'yes'; Bleed, Bayer and Duvall absent.

**COUNTY PRELIMINARY PLAT NO. 99018**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 11, 1999

Schwinn moved approval, with conditions, seconded by Wallace and carried 6-0: Wilson, Schwinn, Wallace, Krieser, Steward and Hopkins voting 'yes'; Bayer, Bleed and Duvall absent.

**SPECIAL PERMIT NO. 381A**  
**FOR A WIRELESS COMMUNICATION ANTENNA**  
**AND EQUIPMENT ON PROPERTY GENERALLY**  
**LOCATED AT NORTH 46<sup>TH</sup> & Y STREET.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** August 11, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Steward and Hopkins; Bleed, Bayer and Duvall absent.

Proponents

1. **Brian Barrett** appeared on behalf of **Sprint PCS** (Personal Communication Services), seeking this special permit to attach antenna onto an existing structure located at 1117 No. 46<sup>th</sup> Street, just north of Y Street. There is an existing tower on the property (the Sperry TV tower) which is approximately 140' tall. They are intending to attach a six-panel antenna at approximately 90' height. At the base, they will be locating a 25 x 30 compound enclosed with a 8' high chain link fence. Within the compound will be radio switching equipment and a generator. Access to the site is immediately to the east. There is an alleyway which will be utilized and both electric and telephone utilities are in existence on the site.

Mr. Barrett stated that this meets their goal to find and utilize existing structures.

Steward wondered whether this tower would be a proper location for other collocated antenna, or what is the saturation condition? Mr. Barrett stated that Sprint performed a structural analysis for the attachment of their equipment. There is another carrier on the tower so it appears to be a good location. Every carrier has a slightly different technology. In this situation, Sprint is able to locate on the tower with another carrier. There are new carriers that will be entering the market. Today the engineers look to existing structures first to plan around and try to utilize as best they can.

Steward commented that this is an issue we will continue to deal with and he is unclear as to the saturation of a particular tower of 140'. Mr. Barrett believes it could handle more than two carriers. At the most, the carriers need 10 to 15 ft. of separation between the panels; some technologies can be placed closer together incorporating some filters and screens. The only question on this tower would be the structural integrity. Mr. Barrett believes that the carriers will, with proper incentive, try to do everything they can to utilize an existing structure.

Hopkins inquired about further consolidation as in using the same transmission lines, or is this not at all even a consideration in the cellular services? Mr. Barrett did a comparison. If he has a Sprint phone, he could certainly call an AT&T phone but it does not use the same antenna panels. To the best of his knowledge the carriers cannot use the same antenna. There are different technologies and the equipment is not standardized. Mr.



Barrett also assumes that if the carriers could do that, they would. Hopkins thinks we have an added impact to the environment because we don't have the standardization. She is also not sure her service is getting better over time.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 11, 1999

Wallace moved approval, with conditions, seconded by Krieser and carried 6-0: Wilson, Schwinn, Wallace, Krieser, Steward and Hopkins voting 'yes'; Bayer, Bleed and Duvall absent.

At the request of the Clerk, Steward moved to remove the View Pointe West applications from the pending list, with public hearing scheduled for August 25, 1999, seconded by Wallace and carried 6-0: Wilson, Schwinn, Wallace, Krieser, Steward and Hopkins voting 'yes'; Bayer, Bleed and Duvall absent.

There being no further business, the meeting was adjourned at 4:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 25, 1999.